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8 Attorneys for The Billing Resource, dba
Integretel

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION
12

13 THE BILLING RESOURCE, dba
Integretel, a California corporation,

Case No. 07-CIV-5758-JW

14 Debtor-Plaintiff-Appellee

15 v.

16 FEDERAL TRADE COMMISSION, et al.

17 Defendant-Appellant
18

19 On Appeal from the United States Bankruptcy Court for the Northern District of
California,

20 No. 07-52890-ASW, Adversary Proceeding No. 07-5156

21 **DECLARATION OF STEVEN B. SACKS IN SUPPORT OF PLAINTIFF-**
22 **APPELLEE THE BILLING RESOURCE, dba INTEGRETTEL's RESPONSE RE**
23 **APPLICATION FOR ACCELERATED CONSIDERATION OF MOTION FOR**
24 **STAY PENDING APPEAL**
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1 I, Steven B. Sacks, declare as follows:

2 1. I am an attorney duly admitted to practice in the State of California and
3 before this Court. I am a member of Sheppard, Mullin, Richter & Hampton LLP, counsel
4 to The Billing Resource d/b/a Integretel ("Integretel").

5 2. This declaration is offered in support of Integretel's response to the Federal
6 Trade Commission's ("FTC") "Application for Accelerated Consideration of its Motion
7 for Stay Pending Appeal" (the "motion"). The FTC failed to make any effort to obtain a
8 stipulation with regard to the motion. Instead, the FTC rejected Integretel's request that
9 the parties submit a joint statement to the Court.

10 3. Integretel is one of numerous parties to an action brought by the FTC in the
11 Southern District of Florida under the FTC Act (the "Florida Action"). Integretel was
12 added to the case several months after the action was filed on the theory that as a data
13 processing intermediary it should be held liable for improper billing transactions submitted
14 to it for processing by two former customers. In parallel proceedings, the Receiver
15 appointed in the Florida Action has asserted that the amount that Integretel carried on its
16 books for "reserves" amounted to an asset of Integretel's former customers that could be
17 turned over to the Receiver.

18 4. Under the pretrial schedule in the Florida Action, summary judgment
19 motions were due on November 6, 2007, responses to those motions were due on
20 December 4, 2007, and replies are due on December 18, 2007. The parties' disclosures
21 under F.R.Civ.P. 26(a)(3) are due on January 25, 2008, as trial is set for February 25, 2008.
22 These disclosures include witness and exhibit lists and designations of deposition
23 testimony. Thereafter, the parties are required to serve objections to exhibits and
24 deposition testimony designated by opposing parties and do all the tasks necessary to reach
25 a detailed and comprehensive pretrial stipulation.

26 5. The injunction under appeal was issued on November 7, 2007 and extends
27 through March 14, 2008 in order to provide Integretel with an opportunity to proceed with
28 its reorganization effort without facing what the bankruptcy court described as "the

1 unusual convergence-- almost a perfect storm—of the trial schedule in the Enforcement
2 Action and the critical first few months of a viable chapter 11 bankruptcy case.” FTCX 25
3 at 29:22-25. The bankruptcy court’s comprehensive 62-page memorandum decision
4 describes the evidence offered by Integretel concerning the pretrial and trial preparation
5 efforts that would be required if the Florida Action proceeded, Integretel’s need to have its
6 personnel work extensively on its reorganization, and the likely costs imposed on
7 Integretel to participate in the Florida Action at a time when its existence is in doubt.
8 FTCX 25, at 29-35. Having concluded that Integretel would be irreparably injured by
9 proceeding with the Florida Action at this time, the bankruptcy court issued an injunction
10 under Section 105 of the Bankruptcy Code.

11 6. The bankruptcy court injunction prevented the FTC from filing a motion in
12 the Florida Action for summary judgment against Integretel on November 6, 2007. After
13 the injunction was announced, the FTC asked the Florida Court to “suspend” the deadline
14 for filing a summary judgment motion against Integretel, and the Florida Court did so,
15 giving the FTC 10 days following the termination of the injunction to bring a summary
16 judgment motion. A copy of the FTC’s motion is attached hereto as Exhibit A. A copy of
17 the Florida Court’s order on the motion is attached hereto as Exhibit B. Thus, in the
18 Florida Action, the FTC’s position has been that at such time as the injunction is not in
19 effect it intends to move for summary judgment.

20 7. The FTC appealed the preliminary injunction to this Court and moved for a
21 stay pending appeal. The FTC has not asked to expedite the appeal or the briefing for it.
22 Accordingly, as the injunction at issue expires on March 14, 2008, the appeal itself is
23 irrelevant, as any decision on the appeal would not make a meaningful difference in the
24 effect of the injunction.

25 8. Instead, the FTC seeks to have the injunction effectively reversed through an
26 order staying the injunction pending appeal. The FTC first sought to shorten the briefing
27 schedule of its motion for a stay pending appeal and the time available to the court for
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1 consideration, but on November 26, 2007, Judge Whyte denied that motion. Docket Entry
2 (“DE”) 10.

3 9. Integretel filed its opposition to the motion for a stay pending appeal. The
4 FTC thereafter filed a reply, attaching further documents to its brief and asserting that
5 these afforded new reasons on which to base a decision granting the motion. On
6 December 6, 2007, the same day as the filing of the FTC’s reply, Judge Whyte recused
7 himself, vacated all pending motion dates, and the matter was reassigned here. The FTC
8 took no action to re-set the motion for a hearing until it filed the present application for
9 expedited consideration. This application came one day after Integretel’s counsel
10 discussed the issue with the FTC’s counsel, noted this Court’s present hearing calendar,
11 and requested that the parties prepare a joint status report to this Court. Instead, the FTC
12 filed this application.

13 10. Integretel will shortly file its plan of reorganization, commencing a process
14 in which it seeks consensus among the creditor body for the plan and ultimately presents it
15 for the bankruptcy court’s approval at one or more hearings. Because of the bankruptcy
16 court’s preliminary injunction, Integretel has had the time to devote to the plan drafting
17 process and will file a plan within two weeks. However, the filing of the plan is but one
18 step of the reorganization process, not the end of it. In addition to the plan, Integretel will
19 need to file a disclosure statement concerning the proposed plan which has to contain
20 “adequate information” that enables creditors to make an “informed judgment” about the
21 plan. 11 U.S.C. § 1125(a), (b). The disclosure statement and plan must be carefully
22 reviewed and negotiated with parties in interest. Typically, a hearing will be set at least 25
23 days after the filing of the disclosure statement, with hearing on confirmation of the plan
24 about 45 days thereafter. Thus the reorganization process has been furthered by the
25 preliminary injunction but it is far from concluded and would be materially harmed by
26 terminating the injunction as these reorganization activities are underway.

27 11. In its original motion for a stay pending appeal, the FTC argued that the
28 injunction may affect its ability to proceed with the trial of the Florida Action at all, as it

1 pointed to a pending motion for a continuance by a defendant in the case based on the
2 preliminary injunction. The FTC admits in its current pleading that the Florida Court
3 denied that motion three weeks ago. Accordingly, the only remaining injury claimed by
4 the FTC is that it would be barred by the injunction from immediately proceeding to trial
5 against Integretel.

6 I declare under penalty of perjury that the foregoing is true and correct to the best of
7 my knowledge.

8 Dated: December 14, 2007

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/s/ Steven B. Sacks

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